

## BILL ANALYSIS

Senate Research Center

S.B. 877  
By: Montford  
State Affairs  
6-28-93  
Enrolled

### BACKGROUND

Currently, there is no statutory provision for representation of the legislature at times when the interest of the legislature and the attorney general diverge. A previous attorney general once stated that he would decline to defend in court a constitutional challenge to a statute with which he disagreed. Additionally, a potential conflict of interest could arise during legislative and congressional redistricting since the attorney general is a member of the Legislative Redistricting Board, which will adopt a legislative redistricting plan should the legislature fail to do so. The legislature has not yet provided itself with a method of securing legal counsel should similar problems arise in the future.

### PURPOSE

As enrolled, S.B. 877 repeals Section 402.0211, Government Code (Provision of Legal Services--in-House Agency Counsel) and adds Chapter 301E, Government Code, authorizing legal representation of the legislature.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 301, Government Code, by adding Subchapter E, as follows:

#### SUBCHAPTER E. LEGAL REPRESENTATION OF LEGISLATURE

Sec. 301.061. LEGAL REPRESENTATION OF LEGISLATURE. (a) Authorizes the legislature, after notifying and consulting the attorney general, to employ counsel or authorize the counsel of a legislative agency, to file suits on behalf of the legislature, to intervene in pending litigation on behalf of the legislature, or to otherwise represent the legislature in the courts of this state or in the courts of the United States, subject to the requirements of Subsection (b) and to the exception provided in Subsection (c).

(b) Provides that representation of the legislature under this section is authorized only if the speaker and the president of the senate approve the representation in writing or both houses by concurrent resolution approve the representation.

(c) Provides that Subsection (a) does not apply to the representation of the interests of the legislature before the Supreme Court of Texas in violation of Article IV, Section 22, Texas Constitution.

(d) Provides that a member of the legislature is immune from civil liability resulting from the legislature's participation in litigation under this section, including liability for attorney fees, costs, and sanctions that may be awarded in the litigation. Provides that this subsection is cumulative of the common law immunity applicable to the conduct of members of the legislature.

SECTION 2. Repealer: Section 402.0211, Government Code (Provision of Legal Services--in-House Agency Counsel).

SECTION 3. Amends Section 402.0212, Government Code, by adding Subsection (c), as follows:

(c) Provides that this section shall not apply to the Texas Turnpike Authority.

SECTION 4. Repealer: Section 21d, Article 6674v, V.T.C.S. (Turnpike Projects).

SECTION 5. (a) Provides that except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Provides that Section 2 of this Act takes effect September 1, 1993.

SECTION 6. Emergency clause.  
Effective date: upon passage.